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IN THE

# Supreme Court of the United States

SEPTEMBER TERM, 1971

No. 70-5112

WILLIE MAE WEBER,

*Petitioner,*

v.

AETNA CASUALTY & SURETY COMPANY, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF LOUISIANA

## BRIEF FOR PETITIONER

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OPINION BELOW

The opinion of the Supreme Court of Louisiana (A. 71)  
is reported at 257 La. 424, 242 So. 2d 567.

The opinion of Court of Appeal of Louisiana (A. 46, 57)  
is reported at 232 So.2d 328.

## JURISDICTION

The judgment of the Supreme Court of Louisiana was rendered on December 14, 1970. Timely Motion for Rehearing was filed and was denied on January 18, 1971. This Court has jurisdiction under 28 U.S.C.A., Section 1257, in that petitioner specially claims rights, privileges and immunities under the Constitution of the United States.

## QUESTION PRESENTED

Whether the Louisiana Law which relegates a deceased father's illegitimate dependent children who are members of his family to a position inferior to that of his legitimate dependent children so that the legitimate children are awarded all allowable workmen's compensation to the exclusion of and the denial of workmen's compensation benefits to the illegitimate dependent children is a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Louisiana Revised Statute, Title 23, Sec. 1021(3):**

"Child" or "Children" cover only legitimate children, stepchildren, posthumous children, adopted children, and illegitimate children acknowledged under the provisions of Civil Code Article 203, 204 and 205.

**Louisiana Revised Statute, Title 23, Sec. 1232:**

Payment to dependents shall be computed and divided among them on the following basis:

(1) If the widow or widower alone, thirty-two and one-half per centum of wages.

(2) If the widow or widower and one child, forty-six and one-quarter per centum of wages.

(3) If the widow or widower and two or more children, sixty-five per centum of wages.

(4) If one child alone, thirty-two and one-half per centum of wages of deceased.

(5) If two children, forty-six and one-quarter per centum of wages.

(6) If three or more children, sixty-five per centum of wages.

(7) If there are neither widow, widower, nor child, then to the father or mother, thirty-two and one-half per centum of wages of the deceased. If there are both father and mother, sixty-five per centum of wages.

(8) If there are neither widow, widower, nor child, nor dependent parent entitled to compensation, then to one brother or sister, thirty-two and one-half per centum of wages with eleven per centum additional for each brother or sister in excess of one. If other dependents than those enumerated, thirty-two and one-half per centum of wages for one, and eleven per centum additional for each such dependent in excess of one, subject to a maximum of sixty-five per centum of wages for all, regardless of the number of dependents.



**Louisiana Civil Code Art. 202:**

Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, are contradistinguished by the appellation of bastards.

**Louisiana Civil Code Art. 203:**

The acknowledgment of an illegitimate child shall be made by a declaration executed before a notary public, in presence of two witnesses, by the father and mother or either of them, whenever it shall not have been made in the registering of the birth or baptism of such child.

**Louisiana Civil Code Art. 204:**

Such acknowledgment shall not be made in favor of children whose parents were incapable of contracting marriage at the time of conception; however, such acknowledgment may be made if the parents should contract a legal marriage with each other. (As amended by Acts 1948, No. 483.)

**STATEMENT OF THE CASE**

Henry Clyde Stokes was killed in Louisiana on June 21, 1967 while in the course and scope of his employment. He was covered by Louisiana Workmen's Compensation Law. (Louisiana Revised Statutes, Title 23, Sections 1021 et seq.)

At the time of his death, Stokes was maintaining a family unit out of wedlock with Willie Mae Weber. The "family" consisted of Henry Clyde Stokes, Willie Mae Weber, the common law wife, four legitimate children born of the marriage between Henry Clyde Stokes and his estranged wife, Adlay Jones Stokes, and one illegitimate child born of the relation between Henry Clyde Stokes and Willie Mae Weber. Willie Mae Weber was also pregnant at

the time of Henry Clyde Stokes' death as a result of relation with Henry Clyde Stokes and this child was born posthumously (R. 82-85). After the death of Henry Clyde Stokes, the four legitimate children, through their maternal grandmother as guardian, filed a claim for workmen's compensation under Louisiana Workmen's Compensation Law (R. 6). The defendant employer, Earl Gibbon Transport Company, Inc. and its compensation insurer, Aetna Casualty & Surety Company, filed an "Answer and Reconventional Demand" whereby they converted the action into an interpleader action and impleaded among others the two illegitimate children born of the relation between Henry Clyde Stokes and Willie Mae Weber (R. 18).

Willie Mae Weber answered the interpleader and prayed that the two illegitimate children be awarded compensation as dependent children of Henry Clyde Stokes (R. 27). In the meantime, the four legitimate children acting through their maternal grandmother as guardian, filed a tort suit against a third party, charging the third party with having negligently caused the death of Henry Clyde Stokes. The tort suit was compromised and the four legitimate children were paid in settlement an amount in excess of the maximum amount which they would or could have recovered under the Louisiana Workmen's Compensation Law (R. 40).

Under the subrogation law of Louisiana an employer or workmen's compensation insurer is entitled to offset any amount which a compensation claimant may recover from a third party tortfeasor. Consequently, the four legitimate children dismissed their workmen's compensation claim (R. 29). The employer and compensation insurer filed an amended and supplementary reconventional demand setting forth the fact of the compromise and full payment of the legitimate children and asserting that all other workmen's compensation claim had been extinguished (R. 31).

In answer to this amended and supplemental petition, Willie Mae Weber, as guardian of the two illegitimate children, specially pleaded that the denial of the right of



compensation to the minor, illegitimate children because of their illegitimacy would deprive them of equal protection of the law and Due Process of Law guaranteed to them by the Fourteenth Amendment of the Constitution of the United States (R. 37).

After trial on the merits, the trial judge rendered a judgment awarding all of the workmen compensation to the four legitimate children and declaring that their entitlement was satisfied by the tort suit settlement. He also rendered judgment in favor of Willie Mae Weber for the use and benefit of the two illegitimate children for any and all such maximum workmen's compensation that might be left remaining and unused by the four legitimate children (R. 58-59). Thus the four legitimate children were awarded all of the workmen's compensation benefit and the two illegitimate children who were members of the same family unit and equally dependent upon their deceased father were awarded nothing solely because they were illegitimate.

On behalf of the two illegitimate children, Willie Mae Weber appealed to the Intermediate Court of Appeal of Louisiana for the First Circuit (R. 5, 70). The Louisiana Court of Appeal avoided the constitutional question on the ground that the pronouncement by the Supreme Court of the United States in *Levy v. Louisiana*, 391 U.S. 68, 88 Sup. Ct. 1509, and *Glonia v. American Guaranty & Liability Insurance Company*, 291 U.S. 73, 87 Sup. Ct. 1515, was not applicable to this workmen's compensation case because the accident out of which the workmen's compensation claim arose, occurred prior to the date of the decision in the *Levy* and *Glonia* cases.

After denial of rehearing by the Court of Appeal of Louisiana the Supreme Court of Louisiana decided the constitutional question in a four to three decision holding that the denial of workmen's compensation to the two illegitimate children solely because of illegitimacy did not deny them equal protection in violation of the Fourteenth Amendment to the Constitution of the United States notwithstanding the *Levy* and *Glonia* decisions.

On April 12, 1971, Willie Mae Weber filed petition for a writ of certiorari from this Court to review the judgment of the Louisiana Supreme Court.

A writ of certiorari was granted on October 12, 1971.

## SUMMARY OF ARGUMENT

Workmen's compensation is a statutory replacement and substitute for the general tort remedy for injury or death provided for by Louisiana Civil Code Article 2315.

Because of this close relationship and similarity, the proscription of the Equal Protection Clause which invalidates invidious discrimination against illegitimate children in a tort cause of action for wrongful death of a parent also invalidates invidious discrimination against illegitimate children in a workmen's compensation claim for the death of a parent.

## ARGUMENT

Because the Two Illegitimate Children of Henry Clyde Stokes Were Equally Dependent upon Him as Dependent Members of His Family the Same as His Four Legitimate Children, the Relegation of the Illegitimate Children to a Deferred Classification So as To Award All of the Compensation to the Legitimate Children to the Exclusion of the Illegitimate Children Constitutes an Invidious Discrimination in Violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The crucial issue in this case is whether the denial to the illegitimate children falls within the reasoning and prohibition of *Levy v. Louisiana*, 391 U.S. 68; or within the permission of *Labine v. Vincent*, 401 U.S. 532, 91 S. Ct. 1017.

In *Levy* the Court held that minor children were not "non-persons"; that because their rights involved "intimate, familial relationship between a child and his own mother"; that because they were dependent upon her and cared for and nurtured by her and "in her death they suffered wrong in the sense that any dependent would"; "legitimacy or illegitimacy of birth has no relation to the nature of the wrong inflicted."

The thrust of *Labine v. Vincent* is, first, to reject the notion that the *Levy* decision, under the aegis of the Equal Protection Clause, invalidates and proscribes all state laws which classify on the basis of legitimacy or illegitimacy, and, second, to preserve the *Levy* decision and make it applicable to the narrow confines of circumstances where classification and exclusion of illegitimates have no rational basis and are therefore arbitrary and invidious.

Obviously the discrimination against the Weber children's claim for workmen's compensation for the death of their father involves the same factors which made the denial of a wrongful death claim to the *Levy* children invidious. The older illegitimate Weber child, Letha Marie, lived with her mother, father and four legitimate Stokes children as a family unit. The then unborn younger illegitimate Weber child, Joseph Lee, was being borne by the mother and had the same potential membership and dependency in the family as the existing children, or as an unborn legitimately conceived child would have had. They suffered the same loss as a result of the industrial accidental death of their father as that which the legitimate children suffered. In theory, at least, in view of their inability to inherit from their father by reason of the Louisiana law of intestate succession which was upheld in *Labine v. Vincent*, 401 U.S. 532, the dependent illegitimate children were left more destitute than the legitimate children as a result of the industrial accidental death of their father.<sup>1</sup>

<sup>1</sup>It is interesting as well as persuasive to note that in the *Levy* Case the Court alluded to the contrasting fairness of Louisiana's Workmen's Compensation Law which allows an illegitimate child who

It must be observed in this case that the final judgment of the trial court (R. 58-59) decreed that the full compensation liability of the employer, Earl Gibbon Transport, Inc., and its insurer, Aetna Casualty and Insurance Company, was satisfied by the tort recovery against a third-party tortfeasor, but that there was reserved to the children the right to any unused compensation benefits left remaining and unused by the legitimate children. Since the entire compensable amount was already paid and the liability of the employer and insurer satisfied and extinguished, from whence will come the benefits which were reserved to the two illegitimate children?

In final analysis this judicial reservation of rights to spent funds is academic and fictitious. It presents an insurmountable barrier to the dependent illegitimate children obtaining any compensation now, when they direly need it, and in the future whatsoever the need and dependency might be.

Thus there is brought into bold relief the "insurmountable barrier" which distinguishes *Levy* from *Labine*, and which subjects Letha Marie Weber and Joseph Lee Weber to the same invidious discrimination which the Court held in *Levy v. Louisiana*, 391 U.S. 68, to be a violation of the Equal Protection Clause, and which *Labine v. Vincent*, 91 S. Ct. 1017, reaffirmed and left undisturbed.

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is a dependent member of a deceased parent's family to recover compensation for his death. *Levy v. Louisiana*, 391 U.S. 68, 72, note 7.

Apparently the Court was not made aware of the discriminatory feature of the law which is before the Court in this instance.

## CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Supreme Court of Louisiana should be reversed.

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November 18, 1971